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*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

No. 08-01789 (SMB)

Plaintiff-Applicant,

v.

SIPA LIQUIDATION
(Substantively Consolidated)

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

Adv. Pro. No. 09-01161 (SMB)

FEDERICO CERETTI, *et al.*,

Defendants.

DECLARATION OF ANTHONY M. GRUPPUSO, ESQ.

Anthony M. Gruppuso, Esq. hereby declares as follows:

1. I am a member of the Bar of the State of New York and this Court, and counsel at Baker & Hostetler LLP, attorneys for the Trustee.
2. I am fully familiar with the facts set forth herein based either upon my own personal knowledge or information conveyed to me that I believe to be true. I make this Declaration in support of the Trustee's motion for entry of an Order: (i) compelling the production from defendants Kingate Global Fund, Ltd. ("Kingate Global") and Kingate Euro Fund, Ltd. ("Kingate Euro," and with Kingate Global, the "Funds") and defendants Kingate Management Limited ("KML"), defendants FIM Limited and FIM Advisers LLP (collectively, "FIM"), defendants Federico Ceretti and Carlo Grosso, and defendants First Peninsula Trustees Limited, Port of Hercules Trustees Limited, Alpine Trustees Limited, The Ashby Trust, Ashby Holding Services Limited, Ashby Investment Services Limited, El Prela Trust, El Prela Group Holding Services Limited, and El Prela Trading Investments Limited (collectively, the "Trust Defendants" and with KML, FIM, Ceretti and Grosso, the "Bermuda Non-Fund Defendants") of all documents produced or exchanged in discovery in the Bermuda Action; and (ii) requiring the Bermuda Non-Fund Defendants and defendants Citi Hedge Fund Services Limited ("Citi Hedge") and HSBC Bank Bermuda Limited ("HSBC Bank Bermuda") to confer with the Funds and the Trustee in accordance with Fed. R. Civ. P. 26(f) and participate in party discovery in this proceeding (the "Motion"), as referenced in the Trustee's Memorandum of Law in support of the Motion.
3. For the Court's convenience and ease of reference, a true and correct copy of the following documents are attached:

- A. Attached hereto as **Exhibit A** is a true and correct copy of the Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery entered by the Court on December 10, 2014, entered in *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, No. 08-01789 (SMB), as ECF Doc. No. 8800.
- B. Attached hereto as **Exhibit B** are a true and correct copy of the Trustee's First Set of Requests for Production of Documents and Things to Defendant Kingate Global Fund, Ltd. dated October 7, 2015, and a true and correct copy of the Trustee's First Set of Requests for Production of Documents and Things to Defendant Kingate Euro Fund, Ltd. dated October 7, 2015.
- C. Attached hereto as **Exhibit C** are a true and correct copy of Defendant Kingate Global Fund Limited's Responses and Objections to the Trustee's First Requests for Production dated November 6, 2015, and a true and correct copy of Defendant Kingate Euro Fund Limited's Responses and Objections to the Trustee's First Requests for Production dated November 6, 2015.
- D. Attached hereto as **Exhibit D** is a true and correct copy of a letter from Lindsay M. Weber, Esq. to Karin S. Jenson, Esq. dated October 13, 2015.
- E. Attached hereto as **Exhibit E** is a true and correct copy of a letter from Lindsay M. Weber, Esq. to Geraldine E. Ponto, Esq. dated December 23, 2015, without attachments.
- F. Attached hereto as **Exhibit F** is a true and correct copy of the Interim Ruling on Plaintiff's Summons of 13th November 2015 issued by the Bermuda court in the Bermuda Action, as defined and referred to in the Trustee's Memorandum of Law in support of the Motion.
- G. Attached hereto as **Exhibit G** are true and correct copies of the cover letter and the Bermuda Action Requests served on Kingate Management Limited, as referenced in the Trustee's Memorandum of Law in support of the Motion.
- H. Attached hereto as **Exhibit H** is a true and correct copy of a letter dated February 19, 2016 from respective counsel for the Non-Fund Defendants to Anthony M. Gruppuso, Esq.
- I. Attached hereto as **Exhibit I** are true and correct copies of the Agreement between Kingate Global Fund, Ltd. and Kingate Management Limited purportedly dated as of November 1994, and the First Amendment to the

Kingate Global Fund, Ltd. Management Agreement dated as of March 1, 1995.

- J. Attached hereto as **Exhibit J** is a true and correct copy of the Manager Agreement dated as of May 1, 2000 between Kingate Management Limited and Kingate Euro Fund, Ltd.
- K. Attached hereto as **Exhibit K** is a true and correct copy of the Co-Manager Agreement dated as of July 1, 2004 between Kingate Management Limited and Kingate Global Fund, Ltd.
- L. Attached hereto as **Exhibit L** is a true and correct copy of the Management Agreement dated as of January 1, 2006 between Kingate Management Limited and Kingate Global Fund, Ltd.
- M. Attached hereto as **Exhibit M** are true and correct copies of the Administration Agreement between Kingate Global Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited purportedly dated as of November 1994 (and as Bates stamped KGFSAC0000593 through KGFSAC0000601), and the First Amendment to the Kingate Global Fund, Ltd. Administration Agreement dated as of March 1, 1995.
- N. Attached hereto as **Exhibit N** is a true and correct copy of the Kingate Global Fund, Ltd. and Kingate Management Limited and Hemisphere Management Limited Restated and Amended Administration Agreement dated May 1, 2000.
- O. Attached hereto as **Exhibit O** is a true and correct copy of the Kingate Euro Fund, Ltd. and Kingate Management Limited and Hemisphere Management Limited Administration Agreement dated May 1, 2000.
- P. Attached hereto as **Exhibit P** is a true and correct copy of the Amended and Restated Administration Agreement between Kingate Global Fund, Ltd. and Kingate Management Limited and BISYS Hedge Fund Services Limited dated June 1, 2007.
- Q. Attached hereto as **Exhibit Q** is a true and correct copy of the Amended and Restated Administration Agreement between Kingate Euro Fund, Ltd. and Kingate Management Limited and BISYS Hedge Fund Services Limited dated June 1, 2007.
- R. Attached hereto as **Exhibit R** is a true and correct copy of the Registrar Agreement between Kingate Global Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited made as of May 1, 2000.

- S. Attached hereto as **Exhibit S** is a true and correct copy of the Registrar Agreement between Kingate Euro Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited made as of May 1, 2000.
- T. Attached hereto as **Exhibit T** is a true and correct copy of the Custodian Agreement between Kingate Global Fund, Ltd. and The Bank of Bermuda Limited and Kingate Management Limited made as of March 1, 1994.
- U. Attached hereto as **Exhibit U** is a true and correct copy of the Custodian Agreement between Kingate Euro Fund, Ltd. and The Bank of Bermuda Limited made as of May 1, 2000.
- V. Attached hereto as **Exhibit V** is a true and correct copy of the Kingate Management Limited and FIM Limited Distribution Agreement relating to Kingate Global Fund, Ltd. dated April 23, 2001.
- W. Attached hereto as **Exhibit W** is a true and correct copy of the Kingate Management Limited and FIM Limited Distribution Agreement relating to Kingate Euro Fund, Ltd. dated April 23, 2001.
- X. Attached hereto as **Exhibit X** are true and correct copies of the Kingate Management Limited and Kingate Global Fund, Ltd. and FIM Limited Consulting Services Agreement made as of December 1, 1995, and the Amendment to Consulting Services Agreement between Kingate Management Limited and Kingate Global Fund, Ltd. and FIM Limited effective December 1, 1995.
- Y. Attached hereto as **Exhibit Y** are true and correct copies of the Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Global Fund, Ltd. dated April 23, 2001, and the Deed of Novation between Kingate Management Limited, FIM Limited, and FIM Advisers LLP relating to Kingate Global Fund, Ltd. dated July 29, 2005.
- Z. Attached hereto as **Exhibit Z** are true and correct copies of the Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Euro Fund, Ltd. dated April 23, 2001, and the Deed of Novation between Kingate Management Limited, FIM Limited, and FIM Advisers LLP relating to Kingate Euro Fund, Ltd. dated July 29, 2005.
- AA. Attached hereto as **Exhibit AA** is a true and correct copy of the Queen's Bench decision dated November 22, 1990, *Prudential Assurance Co. v. Fountain Page, Ltd.* [1991] 1 W.L.R. 756 (QB).

- BB. Attached hereto as **Exhibit BB** is a true and correct copy of the Court of Appeal decision dated May 23, 1997, *Mahon v. Rahn & Ors* [1998] Q.B. 424.
- CC. Attached hereto as **Exhibit CC** is a true and correct copy of the House of Lords decision dated October 29, 1998, *Taylor v. Director of the Serious Fraud Office* [1999] 2 A.C. 177 (HL).
- DD. Attached hereto as **Exhibit DD** is a true and correct copy of a letter dated March 18, 2016, from Lindsay M. Weber, Esq. to Geraldine E. Ponto, Esq.
- EE. Attached hereto as **Exhibit EE** is a true and correct copy of a letter dated March 28, 2016, from Geraldine E. Ponto, Esq. to Lindsay M. Weber, Esq.
- FF. Attached hereto as **Exhibit FF** is a true and correct copy of a letter dated February 10, 2016, from Anthony M. Gruppuso, Esq. to counsel for the Non-Fund Defendants (as defined in the Trustee's Memorandum of Law in support of the Motion), with enclosure.

4. The attorneys for the Trustee have conferred with the attorneys for the Responding Defendants in a good-faith effort to resolve by agreement the issues raised by the Motion without the intervention of the Court and have been unable to reach an agreement.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing statements made by me are true and correct.

Dated: April 15, 2016
New York, New York

/s/ Anthony M. Gruppuso
Anthony M. Gruppuso